

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
\$3,275.00 IN U.S. CURRENCY,
Defendant.

Case No. 12-cv-543-L(WVG)

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT AS TO MAMIE
LEE ROBBINS [DOC. 16]**

Pending before the Court is Plaintiff United States of America (“Government”)’s motion for default judgment seeking forfeiture of the interests of Mamie Lee Robbins. This action was brought against Defendant \$3,275.00 in U.S. Currency (“defendant property”), constituting money furnished in exchange for a controlled substance that is liable for condemnation and forfeiture under 21 U.S.C. § 881(a)(6). None of the potential claimants, including Ms. Robbins, have opposed.

The Court found this motion suitable for determination on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d.1). (Doc. 18.) For the following reasons, the Court **GRANTS** Plaintiff’s motion for default judgment. (Doc. 16.)

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1 **I. BACKGROUND**

2 On September 6, 2011, Escondido Police Department detectives had a state search
3 warrant for Ms. Robbins, her vehicle, and her residence. (Compl. ¶ 3 [Doc. 1].) Ms. Robbins
4 and Ellen Hall were contacted in Ms. Robbins' vehicle in Escondido, California, and detained
5 pursuant to the search warrant. (*Id.*)

6 Ms. Robbins admitted possessing methamphetamine on her person, in her vehicle, and her
7 apartment. (Compl. ¶ 4.) A detective retrieved a container from Ms. Robbins' front pocket that
8 contained twenty small baggies that appeared to be marked by weight with a total weight of
9 approximately 35.61 grams of methamphetamine. (*Id.*) The container also had numerous
10 hydrocodone pills in baggies inside of it. (*Id.*) Ms. Robbins told the detective that there was
11 more dope in the car and that it was going to be a "sales case". (*Id.*) The detective found a
12 handbag in the car that contained the following items: (1) \$3,275.00 in U.S. Currency, (2) a box
13 containing a baggie with approximately 2.69 grams of methamphetamine in it, (3) packaging
14 materials, (4) a digital scale, and (5) a metal container with approximately 0.79 grams of
15 methamphetamine in it. (*Id.*)

16 Ms. Hall told detectives that she had a small bag of methamphetamine, which she pulled
17 out of her pants pocket. (Compl. ¶ 5.) She said that it was given to her by Ms. Robbins. (*Id.*)

18 The detectives then went to Ms. Robbins' apartment to finish serving the search warrant.
19 (Compl. ¶ 6.) The detectives noticed several surveillance cameras connected to monitors
20 oriented towards the outside of the apartment. (*Id.*) Packaging materials and a pay-and-owe
21 sheet were also found. (*Id.*) Other items found include mail addressed to Ms. Robbins, two
22 digital scales, and approximately 15 grams of methamphetamine. (*Id.*)

23 Ms. Robbins said that she did not have another job, and selling drugs is how she makes
24 money. (Compl. ¶ 7.)

25 Based on training and experience, the narcotics detectives believed "the defendant
26 currency represented the proceeds of selling methamphetamine and was in an amount and
27 denominations consistent with the sales of methamphetamine at that level and that the
28 methamphetamine found on Robbins' person, in her purse, and in her apartment was being

distributed and sold for profit.” (Compl. ¶ 8.) This opinion is based upon the quantity of methamphetamine, scales, currency, packaging, pay-and-owe sheet, and Ms. Robbins’ statements concerning the sales of methamphetamine. (*Id.*)

Ms. Robbins eventually pled guilty to violating California Health and Safety Code §§ 11378 and 11351, Possession of Methamphetamine for Sale and Possession of Hydrocodone for Sale, in the San Diego Superior Court. (Compl. ¶ 8.)

On March 2, 2012, the Government filed a complaint for forfeiture against the defendant property. (Doc. 1.) On March 8, 2012, an agent of the United States Marshal Service seized and arrested the defendant property under the Court’s order appointing him as custodian. (Running Decl. ¶ 3.)

On March 6, 2012, the Government sent a Notice of Judicial Forfeiture Proceedings and a copy of the Complaint for Forfeiture to Mamie Lee Robbins at three different addresses, Jill Wageman, and Ellen Gay Hall as potential claimants. (Running Decl. ¶ 4.) On May 24, 2012, the same notice and complaint was sent to Mamie Lee Robbins at a fourth address as a potential claimant. (*Id.* ¶ 5.) Notice of this civil forfeiture action was posted on www.forfeiture.gov for at least thirty consecutive days beginning on March 7, 2012. (*Id.* ¶ 6.) No claim or answer has been filed regarding the defendant property. (*Id.*)

On June 6, 2012, the Clerk of the Court entered default against any and all potential claimants except Mamie Lee Robbins. (Doc. 8.) Thereafter, the Government filed this motion for default judgment. (Doc. 9.) None of the potential claimants have opposed. Thereafter, the Court granted the Government’s motion. (Doc. 11.)

The Government now moves for default judgment against Mr. Robbins. (Doc. 16.)

II. LEGAL STANDARD

Rule 55(b)(2) of the Federal Rules of Civil Procedure governs applications to the court for default judgment. *See* Fed. R. Civ. P. 55(b)(2). Default judgment is available as long as the plaintiff establishes: (1) defendant has been served with the summons and complaint and default was entered for their failure to appear; (2) defendant is neither a minor nor an incompetent

1 person; (3) defendant is not in military service or not otherwise subject to the Soldiers and
 2 Sailors Relief Act of 1940; and (4) if defendant has appeared in the action, that defendant was
 3 provided with notice of the application for default judgment at least three days prior to the
 4 hearing. *See, e.g.*, 50 U.S.C. § 521; Fed. R. Civ. P. 55; *Twentieth Century Fox Film Corp. v.*
 5 *Streeter*, 438 F. Supp. 2d 1065, 1070 (D. Ariz. 2006).

6 Upon entry of default, the factual allegations in plaintiff's complaint, except those relating
 7 to damages, are deemed admitted. *E.g.*, *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18
 8 (9th Cir. 1987) (quoting *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977)).

9 Where the amount of damages claimed is a liquidated sum or capable of mathematical
 10 calculation, the court may enter a default judgment without a hearing. *Davis v. Fendler*, 650
 11 F.2d 1154, 1161 (9th Cir. 1981). When it is necessary for the plaintiff to prove unliquidated or
 12 punitive damages, the court may require plaintiff to file declarations or affidavits providing
 13 evidence for damages in lieu of a full evidentiary hearing. *Transportes Aereos De Angola v. Jet*
 14 *Traders Invest. Corp.*, 624 F. Supp. 264, 266 (D. Del. 1985).

15 Entry of default judgment is within the trial court's discretion. *See Taylor Made Golf Co.*
 16 *v. Carsten Sports, Ltd.*, 175 F.R.D. 658, 660 (S.D. Cal. 1997) (Brewster, J.) (citing *Lau Ah Yew*
 17 *v. Dulles*, 236 F.2d 415, 416 (9th Cir. 1956)). In making this determination, the court considers
 18 the following factors: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
 19 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the
 20 action, (5) the possibility of a dispute concerning the material facts, (6) whether the default was
 21 due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil
 22 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
 23 1986).

24 25 **III. DISCUSSION**

26 **A. Verified Claim and Answer**

27 This *in rem* civil forfeiture action is governed by the Supplemental Rules for Admiralty or
 28 Maritime Claims and Asset Forfeiture Actions. *See United States v. Approximately \$1.67*

1 *Million*, 513 F.3d 991, 996 (9th Cir. 2008). *In rem* jurisdiction is obtained “by arrest under
 2 process of the court.” *United States v. 2,164 Watches, More or Less, Bearing a Registered*
 3 *Trademark of Guess?, Inc.*, 366 F.3d 767, 771 (9th Cir. 2004) (internal quotation marks
 4 omitted).

5 Under Rule G(5) of the Supplemental Rules, “[a] person who asserts an interest in the
 6 defendant property may contest the forfeiture by filing a claim in the court where the action is
 7 pending.” The claim must: (A) identify the specific property claimed; (B) identify the claimant
 8 and state the claimant’s interest in the property; (C) be signed by the claimant under penalty of
 9 perjury; and (D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or
 10 (b)(ii)(D). Rule G(5)(b) also provides that “[a] claimant must serve and file an answer to the
 11 complaint or a motion under Rule 12 within 21 days after filing the claim. A claimant waives
 12 any objection to *in rem* jurisdiction or to venue if the objection is not made by motion or stated
 13 in the answer.”

14 The Government served Notice of Forfeiture on all known potential claimants on March
 15 6, 2012. And on May 24, 2012, the Government sent a Notice of Judicial Forfeiture Proceedings
 16 and a copy of the Complaint for Forfeiture by certified mail to Ms. Robbins at a new address.
 17 Since the time of notice, Ms. Robbins has communicated with the Government, but no claim or
 18 answer has been filed by Ms. Robbins regarding the defendant property. Therefore, with the
 19 expiration of the 21-day filing period, Ms. Robbins has waived any objection to *in rem*
 20 jurisdiction or to venue.

21 22 **B. The Government Establishes Its Case by a Preponderance of the Evidence.**

23 Under the Civil Asset Forfeiture Reform Act of 2000, the burden of proof for the civil
 24 forfeiture of any property is on the Government to establish, by a preponderance of the evidence,
 25 that the property is subject to forfeiture. 18 U.S.C. § 983(c). Furthermore, “the Government
 26 may use evidence gathered after the filing of the complaint for forfeiture to establish, by
 27 preponderance of the evidence, that the property is subject to forfeiture,” and “if the
 28 Government’s theory of forfeiture is that the property was used to commit or facilitate the

1 commission of a criminal offense, or was involved in the commission of a criminal offense, the
 2 Government shall establish that there was a substantial connection between the property and the
 3 offense.” *Id.*


4 In this case, the Government’s evidence is not disputed by any claimant, including Ms.
 5 Robbins. Moreover, upon entry of default, the factual allegations in the Government’s verified
 6 complaint are deemed admitted. Therefore, assuming the allegations in the complaint as true,
 7 the Government has shown by a preponderance of the evidence that the defendant property was
 8 involved in a transaction or attempted transaction, or was property traceable to property involved
 9 in violation in violation of 21 U.S.C. § 801 *et seq.*, and in particular, under 21 U.S.C. § 881.
 10 Furthermore, based on the allegations in the complaint, the Government has both proven its case
 11 by a preponderance of the evidence and established the requisite nexus between the defendant
 12 property and the offense.

14 **IV. CONCLUSION & ORDER**

15 In light of the foregoing, the Court **GRANTS** Plaintiff’s motion for default judgment.
 16 (Doc. 16.) Accordingly, the Court **ORDERS** that the interests of Mamie Lee Robbins be
 17 condemned and forfeited to the United States of America.

18 **IT IS SO ORDERED.**

20 DATED: March 27, 2013


 M. James Lorenz
 United States District Court Judge

22 COPY TO:

23 HON. WILLIAM V. GALLO
 24 UNITED STATES MAGISTRATE JUDGE

25 ALL PARTIES/COUNSEL
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 27
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